

Nextel intend, promptly after the closing of the merger, to spin-off Sprint's incumbent local exchange carrier business to Sprint Nextel shareholders.² A copy of the Agreement and Plan of Merger ("Agreement") is attached hereto as Attachment A.

Upon receipt of necessary approvals and consummation of the merger, the combined entity will be one of America's premier communications companies – the leading independent wireless carrier with a nationwide fiber optic and global IP network that will offer broadband wireless and integrated communications services to consumer, business, and government customers. With the completion of this merger of Sprint and Nextel, Sprint Nextel will be well-positioned in some of the fastest growing areas of telecommunications, including mobile data services and push-to-talk features, where the companies have been technological pioneers.

Sprint Nextel will be led by senior executives from both Sprint and Nextel. Timothy M. Donahue, President and Chief Executive Officer of Nextel, will become Chairman of Sprint Nextel. Gary D. Forsee, Chairman and Chief Executive Officer of Sprint, will become President and Chief Executive Officer of Sprint Nextel. Len Lauer, President and Chief Operating Officer of Sprint, will become Chief Operating Officer of Sprint Nextel. The board of directors of Sprint Nextel will be composed of twelve members, drawn equally from the pre-merger boards of the two companies and will have two co-lead independent directors, one from each company. The rest of the management team will be composed of members of management from both of the

at the effective time of the merger. The equity interests in Sprint and Nextel are being valued equally in the merger, and the stock/cash allocation contemplated by the Merger Agreement is designed so that Nextel's existing shareholders will own slightly less than 50% of Sprint's common stock after the transaction closes.

² At closing, Sprint will change its corporate name to Sprint Nextel.

companies. Sprint Nextel will have its executive headquarters in Reston, Virginia, and its operational headquarters in Overland Park, Kansas.

1. Transfer Of Control Of Nextel Under The Communications Act And FCC Rules.

As a matter of communications law, the proposed merger will result in a transfer of control of Nextel's licenses and authorizations, requiring FCC approval under sections 214 and 310(d) of the Communications Act of 1934, as amended ("Act"). Upon receipt of FCC approval and consummation of the proposed transaction, Nextel's separate corporate existence will cease. Nextel's current wholly owned subsidiaries holding section 214 authorizations and/or radio licenses will survive as wholly owned subsidiaries of Sprint Nextel.³ The transaction does not require assignment of any of Nextel's authorizations or licenses, or any change in the licensees that hold such authorizations and licenses. The same companies will continue to provide service to the public; the only change in ownership will occur at the holding company level. Similarly, Sprint's wholly owned subsidiaries will be held by Sprint Nextel and will continue to provide service to the public. The merger does not involve a change in control of these companies under the Act.

³ The following types of FCC licenses and authorizations held by Nextel entities will be involved in the transfer of control: CMRS (including 800 MHz, 900 MHz, and Microwave); PMRS (including 800 MHz and Microwave); 700 MHz Guard Band; BRS (formerly MDS); WCS; Cable Television Relay Service; Earth Station; Experimental; and International Section 214 Authority. In addition, Nextel's decision to accept the terms of the Commission's Report and Order in WT Docket No. 02-55 reconfiguring the 800 MHz Land Mobile Radio band (discussed further below in Section II(G)), grants Nextel 1.9 GHz Personal Communications Service licenses, which are incorporated herewith as part of this Application. See Letter from Timothy M. Donahue to Chairman Michael Powell, WT Docket No. 02-55 (Feb. 7, 2005). As part of the acceptance of the 800 MHz reconfiguration, Nextel will be surrendering the 700 MHz Guard Band spectrum.

In addition to FCC approval, the transaction is subject to notification to and/or review by other governmental agencies, including Department of Justice review pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18(a), and the rules promulgated thereunder, a few state public utility commissions, and certain foreign countries.

2. The Proposed Transaction Is In The Public Interest.

As explained more fully below, the transaction serves the public interest, convenience, and necessity, and the Commission should grant the application. At a minimum, the merger of Sprint and Nextel will:

- Create a strong, independent, and innovative competitor in the telecommunications marketplace that will enhance competition for mobile telephony services and bring about significant movement toward true intermodal competition;
- Improve noticeably wireless service coverage, capacity, and quality by allowing cost-effective optimization of the Sprint and Nextel cell sites, spectrum, networks, and operations;
- Deploy broadband infrastructure more efficiently, obviating the need for a multi-billion dollar investment by Nextel in new wireless communications facilities; and
- Develop wireless, interactive multimedia communications solutions for urban and rural consumers and businesses using spectrum in the 2.5 GHz band.

With its network and spectrum assets, Sprint Nextel will offer a wide array of products and features to address customer needs. The new company will possess robust wireless network capabilities, including Nextel's existing nationwide 800 MHz and 900 MHz iDEN[®] network, Sprint's current national 1.9 GHz Code Division Multiple Access ("CDMA") voice and high-speed data network, and the merged company's planned 1xEV-DO Revision A ("1xEV-DO Rev. A") enhanced data network that it intends to deploy beginning in late 2006 or early 2007. The

merger will bring the services and capabilities of 1xEV-DO Rev. A to both current and future Sprint Nextel subscribers faster than Sprint could have achieved on a stand-alone basis.⁴

In the *Cingular Order*, the Commission understood that the integration of multiple wireless networks (six in the case of AT&T Wireless and Cingular) takes time, but it recognized that “[O]nce the combined entity integrates the two existing systems, including consolidating what will be duplicate [multiple] networks, the amount of spectrum available to support current as well as new customers will be greater than either existing company currently commands.”⁵ Similarly, Sprint Nextel will have access to more spectrum to support current and future customers – and to tailor its networks and services to meet the needs of a broader range of customers – than either company would have alone.

As discussed more fully below, the proposed merger will not only ensure an efficient deployment of broadband infrastructure, it will yield substantial economies. In particular, the merger will obviate the need for a multi-billion dollar investment by Nextel in new advanced network facilities that would offer services that Sprint is already in the process of deploying. These savings will enable Sprint Nextel to focus its financial and technical resources on enhancing the existing CDMA network, including adding high-performance push-to-talk

⁴ CDMA 1xEV-DO Rev. A (also known as IS-856 Release A) will enhance the capabilities of CDMA EV-DO technology for voice and data capabilities. CDMA 1xEV-DO Rev. A is expected to provide a peak downlink data rate of 3.1 mbps, with an anticipated average data rate of 400-600 kbps. Uplink data rates peak at 1.8 mbps, with average user data rates in the 300-500 kbps range. See Joint Declaration of Oliver Valente and Barry West, Attachment C ¶ 12 (“Valente/West Declaration”).

⁵ *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer of Control of Licenses and Authorizations, Memorandum Opinion and Order*, 19 FCC Rcd 21522 ¶ 210 (2004) (“*Cingular Order*”).

features, making it the premier mobile broadband network in the industry.⁶ Following the proposed merger, Sprint Nextel plans to enhance the coverage and capacity of the CDMA network by sharing such network assets as cell site leases and physical facilities. The Applicants will be able to improve the coverage and capacity of both the CDMA and iDEN networks by combining their cell site portfolios and filling gaps in existing coverage areas. In particular, adding CDMA infrastructure to existing iDEN cell site shelters will result in major improvements in CDMA coverage – both for the current network and the future 1xEV-DO Rev. A overlay – at substantial cost savings.⁷

In the near term, the company could work with its vendors to develop a multi-mode phone that will allow customers access to the iDEN and CDMA networks of the merged company.⁸ Within the networks, gateway facilities will be added to enable these different networks to interoperate over an IP infrastructure. Thus, the merger will expand the availability of high-performance push-to-talk features as well as state-of-the-art broadband services, and, like Cingular's merger with AT&T Wireless, "the additional spectrum the combined entity will have

⁶ The company will operate the iDEN network to serve customers whose needs are most economically and efficiently met on a voice and narrowband data network, while customers desiring or requiring high-speed data and other broadband features will be more interested in the CDMA network. *See* Valente/West Declaration ¶ 33.

⁷ *See Cingular Order* ¶ 210 (identifying improvements in service quality, including increased capacity and reduced coverage holes, as a basis for approving a transfer of control application).

⁸ Currently, there are no handsets in existence that would permit CDMA customers to roam on the iDEN network, and vice versa.

available, in terms of both capacity and geographic coverage, should facilitate the combined entity's deployment of more robust and ubiquitous advanced services.”⁹

Thus, the combination of Sprint and Nextel is expected to yield significant efficiencies, as discussed in more detail below, amounting to a total net present value of approximately \$12 billion. Several synergies flow from the combination of the customer base (and potential customer base) and assets of the two companies. For example, the merged company will enjoy economies in connection with the acquisition of network equipment and handsets and other terminal devices. This will reduce costs and improve the competitive posture of the merged company, to the benefit of consumers.

The merger will allow the elimination of redundant cell sites, resulting in long-term cost savings for the combined company in terms of both capital expenditures and network operating expenses. The migration of Nextel's backhaul traffic from current leased facilities to Sprint's fiber network and IP backbone will generate additional savings, as will operational efficiencies in IT, billing, and customer care. All of these synergies and efficiencies improve the competitive posture of the company, promising welfare benefits to society from increased competition in addition to overall cost reduction and its concomitant effect on prices.

The merger will enable the company to undertake future investments in research and development that will lead to the implementation of cutting-edge, multimedia products and services that will generate economic growth and bring tremendous innovation and value to consumers. In the 2.5 GHz band, Sprint and Nextel intend to offer bandwidth-intensive applications that incorporate devices, applications, and smart network technologies into an

⁹ *Cingular Order* ¶ 225.

intuitive user service.¹⁰ The resulting services, which the Applicants refer to as wireless interactive multimedia services, would be distinct from any existing or planned CMRS offering. Wireless interactive multimedia services would focus on stationary and portable consumer electronic and computing-oriented devices and hardware. As described in the Rowley/Finch Declaration, the merger generally increases the breadth of the geographic coverage of, but not the depth of, the combined company's 2.5 GHz licenses and leases.¹¹ The majority of Nextel's BRS/EBS licenses and leases are located in the Northeast, the Central states and the South, while the majority of Sprint's BRS/EBS licenses and leases are located in the West and Upper Midwest. For the first time in the long and troubled history of the 2.5 GHz spectrum, therefore, the merger will create a carrier with a nearly nationwide footprint in the band, which will finally

¹⁰ The companies' combined 2.5 GHz spectrum holdings extend to Alaska and other rural areas. The Sprint Nextel merger offers the promise of enhanced economies of scale that could enable the accelerated deployment of wireless interactive multimedia services to far more rural communities than if each carrier acted alone.

¹¹ The 2.5 GHz spectrum, located in the 2496-2690 MHz band, houses the Educational Broadband Service (EBS) (formerly the Instructional Television Fixed Service (ITFS)) as well as the Broadband Radio Service (BRS) (formerly the Multipoint Distribution Service (MDS)) and the Multichannel Multipoint Distribution Service (MMDS). The services were renamed pursuant to a revised regulatory regime for the bands that became effective on January 10, 2005. System operators in the 2.5 GHz band (both licensees and lessees) generally provide four categories of service offerings today: (1) downstream analog video; (2) downstream digital video; (3) downstream digital data; and (4) downstream/upstream digital data. *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 ¶¶ 1, 15 (2004) ("BRS Order").

enjoy economies of scale and scope necessary to introduce new bandwidth-intensive, interactive, multimedia services using 2.5 GHz spectrum.¹²

Over the years, Sprint and Nextel has each worked to partner with companies and brands that add scale and scope and provide additional value-added benefits. These relationships have bolstered both companies' marketplace standing. Sprint Nextel will continue to pursue these opportunities, and will be able to do so – with national CMRS and BRS footprints and a multitude of service offerings. The combined entity also will utilize Sprint's nationwide and international fiber optic wireline network, which includes 30 Sprint-owned metropolitan area networks in the U.S. and 37 international fiber points of presence. These assets, coupled with extensive experience in successful collaborations, will allow content providers, systems integrators, mobile virtual network operators, and other new telecommunications entrants to be vital partners to Sprint Nextel. These collaborations will provide additional competitive benefits, features, and services for consumers.

In sum, this merger is ultimately about growth. It will create a robust wireless competitor that will be able to more effectively compete for a broader range of customers in the mobile telephony industry. Verizon Wireless and Cingular each has greater subscriber share and, in many geographic areas, Cingular will have more spectrum than the combined company will have. After closing, Sprint Nextel will derive more than 80% of its revenues from wireless

¹² In the few Basic Trading Areas (BTAs) in which both Sprint and Nextel hold spectrum licenses or leases, the company with the smaller spectrum position generally has an inconsequential holding. Thus, the merger will not lead to materially increased concentration in this band in any given geographic area because Sprint's and Nextel's spectrum resources are predominantly complementary. *See* Joint Declaration of Todd Rowley and Robert Finch, Attachment E ¶ 8 ("Rowley/Finch Declaration").

service and will have a greater ability to compete with these and the other firms than either company would have separately.

Finally, at closing of the transaction, Sprint Nextel will have incumbent local wireline operations in 18 states that currently serve approximately 7.7 million local access lines. As described in more detail below, the Parties intend that the merged company will spin off its ILEC assets in these 18 states to its shareholders. Thereafter, Sprint Nextel will be able to focus on its vision of the “wireless future” in which wireless services expand in scope, intensity of use, and competition with other means of connecting people to their communities and the world. In contrast, major competitors of Sprint Nextel such as Verizon Wireless and Cingular are owned by parents that have significant ILEC operations.¹³ The wireless arms of these legacy (and still predominantly) wireline ILEC companies will mold their competitive strategies and tactics to maximize overall profitability, as the Commission recently observed with respect to Cingular.¹⁴ Sprint Nextel, on the other hand, will have greater ability and incentive to focus on its wireless business strategies. Thus, the merger of Sprint and Nextel should accelerate the increasing substitution of wireless-based services for wireline-based services, thereby creating growth in the wireless industry.

¹³ See *Cingular Order* ¶ 237, n.556 (classifying Sprint as an independent wireless carrier).

¹⁴ *Id.* ¶ 237 (“We find it relevant, in analyzing this proposed transaction, that Cingular is owned by the second and third largest RBOCs. Because BellSouth and SBC derive such a significant portion of their revenues from their in-region wireline operations, these companies have an incentive to protect their wireline customer base from intermodal and intramodal competition.”) (footnotes omitted).

B. Description Of The Applicants.

1. Sprint.

Sprint Corporation is a publicly traded Kansas corporation with headquarters in Overland Park, Kansas.¹⁵ Sprint is a global communications company providing wireless, long distance, and local communications services. Sprint had \$27 billion in annual revenues for the twelve months ending September 30, 2004. Sprint built and operates the United States' first nationwide all-digital, fiber-optic network. With this network, which includes a global Tier 1 IP backbone, Sprint provides a broad suite of voice and data services to domestic and global customers.

Sprint built, and continues to deploy, the first all-digital, all-PCS nationwide wireless network from the ground up, currently serving more than 24 million wireless customers in more than 350 Metropolitan Statistical Areas ("MSAs").¹⁶ Since its inception, Sprint has been a leader in advanced wireless technology. Sprint was the first carrier to deploy a CDMA network. Shortly thereafter, Sprint upgraded its network to include enhanced variable rate coding ("EVRC"), increasing the network capacity and further ensuring efficiency. Sprint then launched 1xRTT voice and data service, expanding voice capacity and providing end users wireless access to Internet and other data services. Sprint's CDMA network covers 99% of major metropolitan areas, airports, and highways in 48 states, the U.S. Virgin Islands, and Puerto

¹⁵ S-N Merger Corp., a wholly owned subsidiary of Sprint, the Transferee in this Application, is a Delaware Corporation.

¹⁶ As of the end of 4Q 2004, the Sprint wireless network serves a total of 24.8 million subscribers: 17.8 million direct, postpaid retail subscribers, 3.3 million through affiliates, and 3.7 million wholesale/MVNO subscribers. Sprint's Local Telephone Division serves approximately 7.7 million access lines in 18 states.

Rico. Together with its affiliates¹⁷ and roaming partners, Sprint offers wireless service in all 50 states. Sprint offers both voice and data services (with data speeds averaging 50 to 70 kbps) on its wireless network.

Sprint also has built one of the largest fiber networks in the U.S. This network has significant operational advantages, including the ability to seamlessly interconnect a variety of technologies, accommodate diverse standards and protocols, and provide secure communications. Sprint's wireline network is extensive and robust. Its U.S. network consists of more than 34,000 physical route miles of fiber optic cable. Its global network consists of over 75,000 route miles of fiber, including an ownership stake in major undersea cable systems.

The U.S. network is an integrated infrastructure based on Dense Wave Division Multiplexing ("DWDM") and Synchronous Optical Network ("SONET") backbone. There are 505 SONET rings and 369 points of presence nationwide reaching all major metropolitan areas in which all services are available. In addition, Sprint's domestic wireline network includes Metropolitan Area Networks ("MANs") in metropolitan areas across the United States. MANs extend Sprint's SONET rings to ILEC end offices and PCS switches and extend the network to within the "last mile" of customers. Sprint's wireline network supports IP, ATM, Frame Relay, and TDM services with flexible mix-and-match architecture for smooth migration to future technology.

Through its Global Network, Sprint offers an expansive portfolio of global voice, frame relay, ATM, and managed IP services. The global network is an integrated infrastructure that includes elements of Sprint's wholly owned network and partner networks. Sprint offers a

¹⁷ The term "affiliate" is used in its colloquial sense rather than as a term of art as found in the Communications Act or the Securities Exchange Act of 1934 and similar statutes.

global OC-192 backbone, as well as a Tier One Native IP network that connects locations in North America, South America, Europe, and Asia-Pacific. Sprint has 37 facilities-based points of presence overseas. There is IP access in nearly 150 countries, and 25% of the Internet is directly connected to Sprint's public IP network. Global voice services are available to over 220 countries worldwide. The following voice services are provided on the Global Network: local, long distance, VoIP, and wireless. Sprint also offers data services, including Virtual Private Networks; switched data services such as Frame Relay, ATM, and IP; point-to-point data services such as private line and Ethernet; and remote access data such as DSL, dial-up IP, and WiFi.

Sprint is qualified to control the licenses involved in the instant transaction. Sprint is currently authorized by the FCC to provide domestic and international long distance service as well as offerings in the Personal Communications and Broadband Radio Services. In addition, Sprint has not "made any representations or acted with a lack of candor in any of its proceedings before the Commission" nor has it engaged in a "pattern of willful violations of the Communications Act or the Commission's rules."¹⁸ Sprint has not engaged in or had judicial decisions against it for non-Commission-related misconduct relevant in deciding whether the transaction serves the public interest, convenience, or necessity including: "(1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of

¹⁸ *Cingular Order* ¶ 48.

antitrust or other laws protecting competition.”¹⁹ Last year, the Commission found Sprint, through its wholly owned subsidiary WirelessCo, L.P., qualified to hold CMRS licenses.²⁰

2. Nextel.

The Commission has found Nextel equally qualified to hold the licenses involved in the instant transaction.²¹ Nextel is a publicly traded Delaware corporation with headquarters in Reston, Virginia. Nextel’s predecessor, Fleet Call, Inc., was founded in 1987, and the company took its current name in 1993. Nextel currently provides its innovative all-digital wireless services in thousands of communities across the United States, including 202 of the top 300 U.S. markets where approximately 217 million people live or work. Nextel and Nextel Partners Inc. together currently serve 297 of the top 300 U.S. markets where nearly 260 million people live or work. Nextel has more than 16 million subscribers, with 2003 revenues of approximately \$10.8 billion, and revenues for the first nine months of 2004 of about \$9.8 billion.

Nextel provides a wide range of digital wireless voice and data communications services over its packet-based “iDEN[®]” technology network developed in conjunction with Motorola, Inc. Operating primarily on Specialized Mobile Radio (“SMR”) licenses in the 800 MHz and 900 MHz bands, Nextel’s iDEN network provides a comprehensive suite of advanced wireless services and features, including digital wireless mobile telephone service, Nextel Nationwide

¹⁹ *Id.* ¶ 47 (footnote omitted).

²⁰ See *Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications*, Report No. 1729 (Jan. 28, 2004) (consenting to the assignment of call sign WPZU405 (previously KNL206) to WirelessCo L.P.).

²¹ See *Applications to Assign Wireless Licenses from WorldCom, Inc. (Debtor-in-Possession) to Nextel Spectrum Acquisition Corp., Memorandum Opinion and Order*, 19 FCC Rcd 6232 ¶ 26 (2004) (“*WorldCom-Nextel Order*”).

Direct Connect™, and Nextel International Direct Connect™ walkie-talkie features, and such wireless data services as Internet access and short messaging. In particular, Nextel's Direct Connect feature is a significant and innovative advancement over traditional analog dispatch services, because it expands the typical dispatch service coverage area, uses the spectrum more efficiently, and provides extra security through digital multiplexing technology.

Nextel has sought additional spectrum capacity and flexibility to support evolving customer interest in next-generation digital wireless services. For example, in 2004, Nextel acquired MDS and MMDS authorizations and other wireless licenses in various geographic areas throughout the United States from WorldCom, Inc. and Nucentrix Broadband Networks, Inc.²² In addition, as discussed further in Section II(G) of this Application, as a result of Nextel's decision to accept the terms of the Commission's *Report and Order* reconfiguring the 800 MHz band,²³ the Commission will modify Nextel's wireless licenses to authorize operations using an additional 10 MHz of CMRS spectrum proximate to Sprint's 1.9 GHz PCS spectrum assignments (at 1910-1915/1990-1995 MHz).

Nextel's business strategy has been to provide differentiated products and services in order to acquire and retain the most valuable customers in the wireless telecommunications industry. Currently, a key focus for Nextel's varied products and services is the business community. Nextel helps corporations and government enterprises add value through Nextel

²² See *Wireless Telecommunications Bureau Grants Consent to Assign Multipoint Distribution Service Station Licenses, Public Notice*, 19 FCC Rcd 6329 (2004); see generally *WorldCom-Nextel Order*.

²³ *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 (2004) ("800 MHz R&O").

Wireless Business Solutions and Custom Network Solutions. In short, Nextel is an innovator in enabling businesses, both large and small, to “get the job done” by matching and exceeding their mobile communications needs.

C. Description Of Affiliates.

Nextel Partners is licensed by the FCC at 800 MHz to provide CMRS services. It provides digital wireless communications services using its own iDEN network under the Nextel brand name in mid-sized, secondary and rural U.S. markets, and has the right to operate in 98 of the top 300 MSAs in the United States. Nextel owns approximately 32% of Nextel Partners’ outstanding stock.²⁴

The merger will give the shareholders of Nextel Partners the option of voting to exercise certain put rights under Nextel Partners’ certificate of incorporation. Under the terms of these arrangements, Nextel Partners’ shareholders may vote to require Nextel to purchase the Nextel Partners shares it does not own and seek FCC approval to transfer the licenses under Nextel Partners’ control. Nextel Partners’ certificate of incorporation specifies a process both for the manner in which Nextel Partners’ shareholders are allowed to exercise those rights and for determining the price at which Nextel Partners’ shares would be purchased that is based on fair market value. The process for making the election to exercise the put rights and for determining the purchase price for Nextel Partners’ shares may extend for a substantial time after the Sprint

²⁴ Nextel also owns approximately 18% of the outstanding common stock of NII Holdings, Inc. (“NII”), which provides iDEN-based wireless communications services primarily in selected Latin American markets. Nextel has roaming agreements with NII that enable Nextel’s subscribers to roam on NII’s networks. This includes full Direct Connect feature interoperability among Nextel and NII customers between the United States and NII’s Latin American markets. Nextel also has a roaming agreement with Telus enabling iDEN roaming for Telus and Nextel customers between Canada and the United States and Direct Connect interoperability between subscribers in the two countries.

Nextel merger is consummated. Because these arrangements could result in Nextel ultimately owning the licenses and other assets of Nextel Partners, the competition analysis provided in this application generally analyzes markets that are licensed to Nextel Partners as if they are licensed to Nextel.²⁵

Sprint's wireless footprint has been expanded to certain areas of the United States through relationships with independent PCS affiliates, which were typically employed in smaller markets to permit Sprint to obtain national coverage more quickly and to provide local market expertise. Currently, Sprint has relationships with twelve different affiliates, some of which are publicly traded and provide service to more than three million subscribers. Generally, the affiliates construct PCS networks and provide service over licenses held and controlled by Sprint, although Sprint does not have ownership interests in these affiliates.²⁶ The affiliates own the equipment and manage the networks pursuant to management agreements and parameters established by Sprint. Sprint provides customer care and billing services for the affiliates, and postpaid subscribers typically make payments directly to Sprint.²⁷ Packaging and pricing of the PCS service are typically performed by Sprint, with some flexibility to offer special local price

²⁵ This assumption and many others embedded in our analysis overstate the overall size and geographic reach of Sprint's and Nextel's holdings. This conservative approach makes the analysis more manageable. It also reinforces the strength of the conclusion that this transaction will benefit competition and other facets of the public interest.

²⁶ Sprint affiliates may also have their own licenses over which they provide CMRS.

²⁷ Customer care for Sprint-branded stores operated by affiliates is provided by affiliate employees. Affiliates may also provide their own billing and care in addition to that supplied by Sprint for certain manager-provided products (*e.g.*, prepaid services) authorized by Sprint.

plans and promotions. For purposes of the competition analysis provided in this application, markets that are managed by Sprint affiliates are analyzed as part of Sprint's service areas.

D. Standard Of Review.

The Commission's review of the proposed Sprint Nextel merger is governed by sections 214(a) and 310(d) of the Communications Act of 1934, as amended. Pursuant to those sections, the FCC should grant the proposed transfer of control upon finding that the transaction serves the public interest, convenience, and necessity.²⁸ To make this finding, the Commission examines whether the merger complies with specific provisions of the Communications Act, other applicable statutes, the FCC's rules, and federal communications policy.²⁹ The potential public interest harms of the transaction, if any, are weighed by the Commission against potential benefits. The Applicants, however, only must demonstrate by a preponderance of the evidence that the proposed transaction, on balance, serves the public interest.³⁰

²⁸ 47 U.S.C. §§ 214(a), 310(d).

²⁹ See, e.g., *Cingular Order* ¶ 40; *WorldCom-Nextel Order* ¶ 23; *Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in Possession, to subsidiaries of Cingular Wireless LLC, Memorandum Opinion & Order*, 19 FCC Rcd 2570 ¶ 24 (2004); *General Motors Corp. and Hughes Electronics Corp., Transferors, and The News Corp. Ltd., Transferee, For Authority to Transfer Control, Memorandum Opinion & Order*, 19 FCC Rcd 473 ¶ 15 (2003) ("*DirecTV Order*").

³⁰ See, e.g., *Cingular Order* ¶ 40; *DirecTV Order* ¶ 15; *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corp., Transferee, Memorandum Opinion & Order*, 17 FCC Rcd 23246 ¶ 26 (2002) ("*AT&T-Comcast Order*"); *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Domestic and Int'l Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, Memorandum Opinion & Order*, 15 FCC Rcd 14032 ¶ 22 (2000) ("*Bell Atlantic-GTE Order*").

The scope of the FCC's review is limited by section 310(d), which requires the Commission to dispose of the transfer application "as if the proposed transferee... were making an application under section 308 for the permit or license in question."³¹ The Commission is not permitted to consider how the public interest, convenience, or necessity would be served by transferring the permit or license to an entity other than the proposed transferee.³² Typically, the Commission begins by examining the transferor's and transferee's qualifications to hold Commission licenses.³³ As noted in the descriptions of the Applicants set forth above, the FCC has repeatedly and recently affirmed Sprint's and Nextel's qualifications.³⁴

The FCC also has concluded that its public interest review requires an examination of the impact of the proposed transaction on competition. If potential anticompetitive effects are found, the FCC considers whether countervailing "efficiencies and other public interest benefits [are] likely to result from the proposed transfers of control of the licenses and authorizations."³⁵ For

³¹ 47 U.S.C. § 310(d). *See also Cingular Order* ¶ 40, n.163.

³² 47 U.S.C. § 310(d).

³³ *See Motient Services Inc. and TMI Communications and Co., LP Assignors and Mobile Satellite Ventures Subsidiary LLC Assignee, Order and Authorization*, 16 FCC Rcd 20469 ¶ 12 (2001) ("Motient & TMI Order"); *Applications of VoiceStream Wireless Corp., Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310 of the Communications Act, Memorandum Opinion & Order*, 16 FCC Rcd 9779 ¶ 19 (2001) ("VoiceStream, Powertel, Deutsche Telekom Order").

³⁴ The FCC generally does not "reevaluate the qualifications of transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing." *Cingular Order* ¶ 44 (footnote omitted).

³⁵ *Global Crossing Ltd. (Debtor-in-Possession), Transferor, and GC Acquisition Ltd., Transferee, Applications for Consent to Transfer Control of Submarine Cable Landing*

instance, the Commission may consider “whether the merger will accelerate the decline of market power by dominant firms in the relevant communications markets and the merger’s effect on future competition.”³⁶

The *Cingular Order*, adopted by the Commission four months ago, sets forth a framework for evaluating the competitive impact of the proposed transaction. In addition to a traditional examination of the merged firm’s market position measured in terms of subscribers and spectrum, the Commission considered whether the “presence of multiple other carriers who have the capacity to add subscribers and the ability to supplement their current capacity”³⁷ would diminish any potential anticompetitive effects of the proposed transaction.³⁸

With respect to the relevant product market for this analysis, the Commission concluded that there is a combined market for mobile telephony services that encompasses mobile voice

Licenses, Int’l and Domestic Section 214 Authorizations, and Common Carrier and Non-Common Carrier Radio Licenses, and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act, Order and Authorization, 18 FCC Rcd 20301 ¶ 17 (2003). See also *Motient and TMI Order* ¶ 12; *VoiceStream, Powertel, Deutsche Telekom Order* ¶ 17.

³⁶ *Cingular Order* ¶ 42 (footnote omitted). See also *Bell Atlantic-GTE Order* ¶ 23; *AT&T-Comcast Order* ¶ 28.

³⁷ *Cingular Order* ¶ 5.

³⁸ *Id.* ¶ 70 (“We begin by determining the appropriate market definitions to employ for the analysis, as well as identifying relevant market participants. We then measure the degree of market concentration. Next we consider the possible competitive harms that could occur due to a significant increase in market concentration or market power. Mergers can diminish competition and firms can exercise market power in a number of ways. A merger may create market power in a single firm and allow that firm to act on its own in raising prices, lowering quality, reducing innovation, or restricting deployment of new technologies or services.... A merger may also diminish competition by enabling the firms selling in the market more likely, more successfully, or more completely to engage in coordinated interaction that harms consumers.”).

and data services marketed to both residential and enterprise subscribers.³⁹ In considering the presence and capacity of other firms, the Commission focused on “the input market of spectrum that is suitable for provision of mobile telephony services.”⁴⁰ The spectrum that it found suitable for the provision of mobile telephony “includes cellular, PCS, and SMR spectrum and currently totals approximately 200 MHz of spectrum.”⁴¹ It expressly excluded spectrum that “is committed to non-mobile telephony uses currently and for the near-term future.”⁴²

With respect to defining the geographic market, the Commission concluded that the relevant “market is a local one... as opposed to a larger regional area or a nationwide area.”⁴³ The Commission relied upon two sets of geographic areas, 348 Component Economic Areas (“CEAs”) and 734 Cellular Market Areas (“CMAs”).

The Applicants have retained Professor Steven C. Salop of the Georgetown University Law Center, and Drs. Stanley M. Besen and John R. Woodbury of the economic consulting firm Charles River Associates, Inc. to prepare an economic analysis of the likely effect of the proposed transaction on competition. The analysis prepared by Drs. Salop, Besen, and Woodbury is attached hereto as Attachment B (referred to herein as the “CRA Analysis”).⁴⁴ The

³⁹ *Id.* ¶ 74.

⁴⁰ *Id.* ¶ 81.

⁴¹ *Id.*

⁴² *Id.* ¶ 81 n.283 (“Note that Advanced Wireless Service (‘AWS’) and Multipoint Distribution Service (‘MDS’) spectrum does not currently meet our criteria because it is committed to non-mobile telephony uses currently and for the near-term future.”).

⁴³ *Id.* ¶ 89.

⁴⁴ Joint Declaration of Stanley M. Besen, Steven C. Salop, and John R. Woodbury, Charles River Associates, Attachment B (“CRA Analysis”).

analysis provided in the CRA Analysis and reflected in this Application conforms in most aspects to the framework set forth by the Commission in the *Cingular Order*. Accordingly, this analysis presumes local geographic areas for the provision of mobile telephony services and considers the potential for unilateral and coordinated effects in these areas. Because CMAs are market definitions that have no applicability to Sprint or Nextel, however, they are omitted from the analysis. Similarly, as subscriber share data for CEAs is not commercially available, the Applicants have not evaluated the competitive impact of the proposed merger using CEAs as the relevant geographic area. The Applicants have, however, been able to obtain proprietary subscriber share data from a third-party vendor, Telephia, Inc. ("Telephia"), for all of the nationwide and certain regional wireless carriers. The Telephia data report subscriber share information for local geographic areas defined by Telephia by assigning counties to a given local service area.

II. THE PROPOSED TRANSACTION WILL SERVE THE PUBLIC INTEREST.

A. The Proposed Transaction Will Combine Companies With Truly Complementary Strengths And Position The Combined Company As America's Premier Wireless Communications Company.

The proposed merger will create the third largest mobile wireless communications company in the country, and one of four firms with a nationwide footprint. The combined company has an estimated equity market capitalization of \$70 billion. As of December 31, 2004, it had more than 34 million direct wireless subscribers, as well as an additional 8.5 million subscribers served through affiliates and partners. Sprint Nextel will have a broad mix of consumer, business, and government customers, and a spectrum position sufficient to provide advanced broadband services.

Sprint Nextel's wireless network will serve over 350 MSAs, with an average of no more than 53.5 MHz in these markets. In most markets, the combined company will have between 40-60 MHz of CMRS spectrum, while in many others it will hold less than 40 MHz. In no case, however, will Sprint Nextel hold licenses for over 60 MHz of CMRS spectrum in any given area.⁴⁵ Including the spectrum managed by or licensed to non-party affiliates, Sprint Nextel will have more than 60 MHz of spectrum in only one area, Hawaii at 67.5 MHz; thus, its spectrum totals would still not exceed 70 MHz.⁴⁶ A detailed summary of the combined spectrum position by market, as well as detailed maps, are attached as Attachments F, G, H, and I.

The combination of these assets will enable Sprint Nextel to compete more effectively in the mobile wireless space than either company could on its own. Sprint Nextel customers will gain access to the industry's leading push-to-talk features and broadband offerings, all from one carrier, and the companies' combined operations will make possible a richer set of products, services, and features in the future.

1. Sprint Nextel's Combined Wireless Network Will Integrate Its Current And Future Offerings.

The new company's robust wireless CMRS network will include operations on Nextel's nationwide 800 MHz and 900 MHz iDEN and Sprint's 1.9 GHz CDMA networks, including Sprint's ongoing nationwide deployment of CDMA 1xEV-DO technology. Following the

⁴⁵ This excludes spectrum licensed to Nextel Partners.

⁴⁶ See *Cingular Order* ¶ 109 (finding that "although 70 MHz represents a little more than one-third of the total bandwidth available for mobile telephony today ... a market may contain more than three viable competitors even where one entity controls this amount of spectrum.").

merger, the Applicants plan to operate both the iDEN and CDMA networks, allowing consumers to capitalize on the respective strengths and features of each network.

The CDMA network will provide customers with broadband capabilities not currently available to Nextel customers. In August 2002, Sprint upgraded its network to CDMA 1xRTT technology, which doubled voice capacity and offers peak data rates up to 10 times faster than 2G CDMA technology. CDMA 1xRTT also supports wireless packet data, which enabled Sprint to deploy industry-leading data applications on the PCS Vision network, including picture mail, video mail, and the Ready Link™ push-to-talk feature.⁴⁷

Similarly, Nextel offers features not currently available to Sprint subscribers. For example, Nextel's iDEN network was built from the ground up to include Nextel's Direct Connect feature, considered the best of its type currently offered in the wireless industry. Direct Connect allows customers to communicate instantly with the 17 million plus subscribers of Nextel, Nextel Partners, and Boost Mobile,⁴⁸ using the Nextel network.⁴⁹ The feature enables customers to quickly establish private, one-to-one conferences nationwide or within a group, or local one-to-many conferences, allowing for more efficient communications than possible on a traditional wireless call.

⁴⁷ Valente/West Declaration, Attach. 1, ¶ 7.

⁴⁸ Boost Mobile, headquartered in Irvine, California, is a division of Nextel that focuses solely on developing and distributing iDEN-based communications products and services to youthful consumers. Nextel offers pay-as-you-go wireless phone and entertainment services under the Boost Mobile brand, which are designed to meet the lifestyle needs of today's active youth. *See* Boost Mobile, "About Boost," *available at* <http://www.boostmobile.com/about.html> (last visited Jan. 27, 2005).

⁴⁹ *See* Nextel SEC Form 10-K for the Fiscal Year Ended Dec. 31, 2003, at 3.

Following the proposed transaction, Sprint Nextel will operate both the CDMA and iDEN networks, and prospective customers who visit Sprint Nextel retailers after the merger will be able to ascertain which network and functionalities most efficiently, effectively, and economically address their needs.⁵⁰ Customers who need wireless broadband capabilities will be more interested in CDMA service, currently available on Sprint's network and handsets. Customers who prefer the robust, instant-communication push-to-talk functionality available through Direct Connect on Nextel's network will be more attracted to the iDEN network and handsets.

In addition, as discussed above, the Applicants could work with their vendors to develop multi-mode handsets and terminal devices to provide interoperable service between the Applicants' iDEN and CDMA networks and plan to deploy translation devices (or "gateways") to interpret and facilitate interoperability between the two networks.⁵¹ In short, both current and future Sprint Nextel customers will have a broader array of services and features to choose from than either company provides today or would be likely to provide in the future on a stand-alone basis.

2. Sprint Nextel Is Ideally Positioned To Deploy Advanced High-Speed 3G Data Services Expeditiously.

Sprint Nextel will be committed to advancing its industry-leading broadband offerings as it transitions to new third-generation ("3G") or other advanced technology platforms. As analysts have noted, the mobile business "is now entering a technology driven phase where availability of mobile data (e-mail, Internet access), base stations and mobile computing will

⁵⁰ Valente/West Declaration ¶¶ 10-12.

⁵¹ *Id.* ¶¶ 26-27, 45.

shape the market.”⁵² Consumer demand for wireless data services is growing tremendously, as demonstrated in part by Sprint’s successes. For example, the Commission observed that as of April 2004, nearly 28% of Sprint PCS customers subscribed to data services,⁵³ and more than four million were subscribed to Sprint’s advanced offering, PCS Vision. Since PCS Vision was launched in 2003, Sprint has sold more than 9.5 million games⁵⁴ and customers have shared “more than 100 million images and 15-second video clips.”⁵⁵ Sprint Nextel’s deployment of a 3G platform promises to accelerate these trends.

In June 2004, Sprint announced adoption of a CDMA 1xEV-DO solution as a 3G platform to enhance the PCS Vision network’s data rate and capacity. As noted above, this platform provides an order of magnitude increase in data rates.⁵⁶ Sprint has begun launching CDMA 1xEV-DO and plans to make the service available to 129 million people in 39 major cities this year; coverage will be extended to the vast majority of its licensed markets in 2005-2006.⁵⁷ As discussed above, Sprint Nextel will follow that deployment with the 1xEV-DO Rev. A upgrade throughout its network, offering peak downlink data rates of 3.1 mbps, with average

⁵² Paul Budde Communication Pty Ltd., *USA - Mobile Communications - Market Overview & Statistics* at 8 (2004), available for purchase at <http://www.budde.com.au/Reports/Contents/USA-Mobile-Communications-Market-Overview-Statistics-1838.html>.

⁵³ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Ninth Report*, 19 FCC Rcd 20597 ¶ 178 (2004) (“*Ninth CMRS Report*”). By year end, there were 6.2 million PCS Vision subscribers.

⁵⁴ *Ninth CMRS Report* ¶ 183.

⁵⁵ *Id.* ¶ 184.

⁵⁶ Valente/West Declaration Attach. 1, ¶ 9. *See also* n.5, *supra*.

⁵⁷ *3G Services Begin to Launch in U.S.*, Wall St. J., Jan. 18, 2005.